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No. 75-616

In the Supreme Court of the United States

OCTOBER TERM, 1975

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

MOTION OF THE LEAGUES OF WOMEN VOTERS OF THE UNITED STATES, ILLINOIS, COOK COUNTY, AND ARLINGTON HEIGHTS-MT. PROSPECT AREA, THE AMERICAN JEWISH COMMITTEE, THE ARLINGTON HEIGHTS CLERGY FELLOWSHIP AND THE MINORITY INDUSTRIAL RELATIONS COUNCIL, INC. FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

And

BRIEF OF THE LEAGUES OF WOMEN VOTERS OF THE UNITED STATES, ILLINOIS, COOK COUNTY, AND ARLINGTON HEIGHTS-MT. PROSPECT AREA, THE AMERICAN JEWISH COMMITTEE, THE ARLINGTON HEIGHTS CLERGY FELLOWSHIP AND THE MINORITY INDUSTRIAL RELATIONS COUNCIL, INC. AS AMICUS CURIAE.

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NOW COME the Leagues of Women Voters of the United States, Illinois, Cook County and Arlington Heights-Mt. Prospect Area, the American Jewish Committee, the Arlington Heights Clergy Fellowship, and the Minority Industrial Relations Council, Inc., by their undersigned attorneys, and respectfully apply for leave to file a brief as *amicus curiae* in the above-captioned case pursuant to Rule 42(3), and in support of their application state:

1. *Amici* pursue and support programs aimed at insuring equal opportunity for all Americans. They are deeply concerned with the rapid growth of residential segregation, particularly in suburban areas, and the resulting denial of employment and other opportunities in these areas to minorities, including blacks and Spanish-speaking persons.

2. The League of Women Voters of the United States ("League"), incorporated under the laws of the District of Columbia in 1920 and with a current membership of approximately 140,000, has since that time promoted political responsibility through informed and active participation of citizens in government. The League's studies on the impact of inequality of opportunity in employment, education and housing in the United States establish that in the field of housing, exclusionary zoning and other restrictive practices against low- and moderate-income citizens have their greatest impact on black and Spanish-speaking minorities. The League has concluded that such residential segregation is one of the primary causes of lack of opportunity in the critical areas of employment and education. It is committed to a policy aimed at eradicating exclusionary zoning and other restrictive practices which serve to deny citizens of low and moderate income equal access to the suburban housing and employment market.

3. The Leagues of Women Voters of Illinois, Cook County and Arlington Heights-Mt. Prospect Area are, respectively, an affiliate of the League of Women Voters of the United States (with approximately 9,000 members in 81 local chapters throughout Illinois), an interleague organization consisting of 30 local leagues serving 43 municipalities, and the local league directly involved in the Arlington Heights area.

The Illinois League has adopted a position advocating revision of zoning laws, when necessary, to accommodate the development of low- and moderate-income housing. The Cook County League is concerned with the marked trend toward a poor black inner city ringed by white, middle class suburbs. The Arlington Heights-Mt. Prospect League, recognizing the great extent to which suburban zoning practices and segregated housing in both the City of Chicago and Arlington Heights have resulted in the denial to racial minorities of equal access to expanding employment opportunities in the Arlington Heights area, has been a moving force behind and continues to be an active supporter of the housing project which is the subject of this appeal.

4. The American Jewish Committee ("AJC"), a national organization of approximately 40,000 members, founded in 1906 for the purpose of protecting the civil and religious rights of Jews, believes that helping to preserve the security and the constitutional rights of all Americans, irrespective of race, creed, national origin, social or economic background will best protect the security and the constitutional rights of American Jews. For this reason, the AJC has for many years vigorously supported the extension of equal housing and employment opportunities to all individuals. The AJC views restrictive zoning practices

as preventing low and moderate income persons, in general, and minority residents of the inner cities, in particular, from living in those suburban areas in and around which today's expanding job opportunities are increasingly found.

5. The Arlington Heights Clergy Fellowship is an interdenominational association of ministers with congregations in Arlington Heights. Its members believe that restrictive zoning practices, such as are involved in this case, ought to be prohibited because they perpetuate the discriminatory denial to minorities and other low- and moderate-income persons who work, or may desire to work, in or near Arlington Heights, of the opportunity to live there.

6. The Minority Industrial Relations Council, Inc. ("MIRC") is a consortium of twenty-nine suburban companies (some located in Arlington Heights) that have organized to improve economic opportunities for blacks and other minorities in Chicago's suburbs. Federal law requires the member companies of MIRC to recruit and hire blacks and other minority group members. Because of the lack of low- and moderate-income housing in Arlington Heights and other suburbs, these companies experience great difficulty in meeting their affirmative action hiring goals. MIRC supports efforts to remove the barriers which prevent poor and minority people from living in Arlington Heights and other suburban communities.

7. *Amici* believe that an *amicus* brief on their behalf will help to demonstrate the relationship between the issues in this case and the nationwide problem of metropolitan area housing segregation. Because of studies conducted during the past decade, *amici* are familiar with the causal relationship between suburban exclusionary zoning practices and metropolitan area residential patterns. The

result is that poor black and other racial minority members are locked into inner city ghettos while both employers and whites pass readily through open doors into suburbia. As a result of their combined national and local viewpoints, the *amici* can discuss for the Court the extent to which the action involved herein is typical of the perpetuation by municipalities of racial segregation in metropolitan areas through the exercise of local zoning powers.

8. The undersigned attorneys requested the written consent of the parties in this litigation to file a brief as *amicus curiae,* and such consent was refused by counsel for the Petitioner, the Village of Arlington Heights.

9. Forty printed copies of the proposed brief of the *amici* are being lodged with the Clerk contemporaneously with this motion.

Respectfully submitted,

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MAY IT PLEASE THE COURT:

PRELIMINARY STATEMENT

The Leagues of Women Voters of the United States, Illinois, Cook County and Arlington Heights-Mt. Prospect Area, The American Jewish Committee, The Arlington Heights Clergy Fellowship and The Minority Industrial Relations Council, Inc. respectfully submit this brief *amicus curiae*. Their interest is set forth in their motion for leave to file this brief, which is incorporated herein by reference.

The refusal of the Village of Arlington Heights to grant the request of the Metropolitan Housing Development Corporation for rezoning was an unconstitutional application of the Village's zoning ordinance when viewed against the historical pattern of residential segregation in Arlington Heights and in the metropolitan Chicago area and the failure of the Village of Arlington Heights to take any action to ameliorate this condition.

Arlington Heights' zoning ordinance, as administered, perpetuates the practice of preventing racial minorities from residing in Arlington Heights, and by so doing it further tightens the vise around inner-city minorities. It operates to exclude these low- and moderate-income minority persons from housing, employment and other opportunities on the same basis as white suburban residents and thereby deprives minority residents of their right to equal protection of the law.

Arlington Heights' action is also typical of the critical national problem of metropolitan area-wide racial housing segregation created and perpetuated, in large part, by restrictive practices of suburban municipalities. These

practices further exacerbate the national school integration crisis, by maintaining residential separation of races.

The action of the Village of Arlington Heights, affecting the interstate metropolitan Chicago area, also violates national policy against racially restrictive practices in housing, expressed by Congress in the Civil Rights Act of 1866 and the Fair Housing Act of 1968. Specifically, the application of the Arlington Heights zoning ordinance prevents, in an interstate metropolis, utilization of a federal program for subsidized housing designed to implement this national policy. The Constitution and the congressional policy should not be thwarted by efforts of suburban communities which are an integral part of a metropolitan area to erect and maintain white picket fences around themselves, thereby violating the constitutional rights of other citizens.

ARGUMENT

I.

The Petitioner's Zoning Ordinance Was Applied to Perpetuate Local and Area-Wide Segregated Housing, Depriving Citizens of Equal Protection of the Law.

The metropolitan Chicago area consists of some seven million people, extending beyond artificial state, county and municipal boundary lines, from southern Wisconsin, through northeastern Illinois, into northern Indiana. The heart of the area is the inner city of Chicago, but the rings of communities surrounding it are equally a part of one large urban entity. What in the past may have been a number of independent communities, economically self-sufficient and physically separated by green belts, has become today one megapolis, one large community, melded together, extending mile after mile, with no visible separation of technically independent governmental units. However, in Chicago and elsewhere across the nation, the urban areas have become marred by the blight of racial segregation.

It is indisputable that the metropolitan Chicago area as a whole is racially segregated. Lower federal courts have taken judicial notice of such segregation. *Gautreaux* v. *Chicago Housing Authority,* 503 F.2d 930, 937 (7th Cir. 1974), *cert. granted sub. nom. Hills* v. *Gautreaux,* 421 U.S. 962 (1975); *Clark* v. *Universal Builders, Inc.,* 501 F.2d 324, 334-35 (7th Cir. 1974), *cert. denied,* 419 U.S. 1070 (1974). Within the area, the Village of Arlington Heights is one of the most segregated suburban communities. Of its 64,000 residents in 1970, only twenty-seven were black. Between 1960 and 1970, the black population of the four-township area of which Arlington Heights is a part increased by 170 persons, while the area's white population had an explosive increase of 219,000 people.

Nor is this a static picture of racial segregation, limited to Arlington Heights; rather, the accelerating segregation of Arlington Heights and similar satellite communities of Chicago is producing increased segregation in the core city, Chicago, itself. The percentage of city inhabitants who are members of racial minorities is steadily increasing, while such minorities' proportionate representation in suburban communities is, with few exceptions, decreasing. (Tr. 533-34).

Chicago, along with other great urban centers, has fallen victim to an inexorable process whereby it has taken "the racial shape of a donut with the Negroes in the hole and mostly Whites occupying the ring", *quoted in, United States* v. *City of Black Jack, Missouri,* 508 F.2d 1179, 1186 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975).

This residential phenomenon is accompanied by a corresponding ghettoization of employment opportunities, of which segregated housing is both cause and effect. Thus white residents fleeing from cities to suburbs are joined by the actual and prospective employers of the racial minorities left behind.* This case offers dramatic evidence of such shift in employment opportunities: between 1960 and 1970, the City of Chicago lost 230,000 jobs, while the number of jobs in the Arlington Heights area doubled from 100,000 to 200,000 (Tr. 574). This loss of jobs, combined with dramatically high unemployment rates for inner-city minority residents, creates a dangerous mixture which leads to violence: motivation created by the despair of pov-

* Orshansky, *The Poor in City and Suburbs, 1964,* 29 SOCIAL SECURITY BULL., Dec. 1966, at 29; NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, THE IMPACT OF HOUSING ON JOB OPPORTUNITIES 24-26 (1968).

erty, and rationalization created by loss of constitutional rights. Along with housing and employment ghettos, this pattern produces accelerated segregation in the schools.

In this context of a pattern of segregated housing in the metropolitan Chicago area and in Arlington Heights, and where Arlington Heights has made no effort to alleviate the situation, the use by Arlington Heights of its zoning ordinance to prevent the construction of subsidized, integrated housing such as Lincoln Green, discriminated unlawfully against racial minorities. Thus, the present case is not governed by *Village of Belle Terre* v. *Boraas,* 416 U.S. 1 (1974). *Belle Terre* did not present an issue of zoning restrictions adopted or administered with the obvious and foreseeable effect of excluding blacks and other minorities from white suburbs and confining them to a black city. Nothing in *Belle Terre* demonstrated a pattern of discrimination in which minorities are excluded from a suburb with the result that they are confined to the major city of which the suburbs are satellites and are excluded from employment opportunities in the suburb itself.

The Court found in *Milliken* v. *Bradley,* 418 U.S. 717 (1974), that governmental action having the "natural, probable, foreseeable and actual effect" of creating and perpetuating school discrimination within Detroit constituted a sufficient predicate for violation of the Equal Protection Clause. 418 U.S. at 725-26. So here, the obvious and foreseeable effect of the Arlington Heights zoning ordinance has been to create and perpetuate a segregated community in which black and other minority persons have been unable to live and work, and where they have been denied the opportunity of attending local, integrated public schools. This is a violation of the Equal Protection Clause of the Fourteenth Amendment. It is also, unfortunately, not unique to Arlington Heights.

II.

The Problem of Racial Residential Segregation Pervades Metropolitan Areas.

Our nation has been constitutionally committed to equality of opportunity for two centuries and to elimination of racial discrimination for more than one century. These goals, promised by the Thirteenth and Fourteenth Amendments, have been largely illusory. They will remain an illusion unless positive steps are taken to eradicate those conditions caused by governmental action or inaction which prevent the full admission of racial minorities into our historically white-dominated society. Among these objectionable conditions are both racially segregated housing and accompanying racially segregated employment condition throughout the country. *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 800 (1973); *United States* v. *City of Black Jack, Missouri, supra* at 1186. Both of these conditions are present in this case.

Despite the existence of legislation generally condemning housing discrimination, our nation's urban centers have become more and more heavily populated by black and other minority residents, while they are surrounded by a growing ring of white suburbs. See *United States* v. *City of Black Jack, Missouri, supra.*

Low income minorities are forced to remain in inner city ghettos because man-made barriers block their entrance into white suburban neighborhoods. Exclusionary zoning practices utilized by suburban municipalities are among the most formidable and impregnable of such barriers. See *Kennedy Park Homes Assn.* v. *Lackawanna,* 436 F.2d 108 (2d Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971); *Dailey* v. *City of Lawton, Oklahoma,* 425 F.2d 1037 (10th Cir. 1970); Orshansky, *supra* at 22, 26, 30. Their clear effect and their purpose, except in rare situations, is to erect a barrier against racial minorities, by raising

artificially the cost of suburban housing to levels beyond the reach of the low-income inner-city dwellers, a proven disproportionate percentage of whom are members of racial minorities.* Developing municipalities eagerly seek industries and then just as eagerly seek to exclude racial minorities from employment in those industries. They do this by rendering it impossible for lower paid employees of these industries to live in the community where such employees work.** This result is constitutionally proscribed: it is state action which discriminates in housing and employment opportunities on the basis of race.

III.

Petitioner's Denial of the Rezoning Request Contravenes National Housing Policy, the Fair Housing Act of 1968 and Civil Rights Acts.

Pursuant to its mandate under the Thirteenth and Fourteenth Amendments to the Constitution, Congress has enacted legislation aimed at prohibiting both subtle and obvious forms of discrimination in employment and housing. *Williams* v. *The Matthews Company,* 499 F.2d 819, 826 (8th Cir. 1974), *cert. denied,* 419 U.S. 1021 (1974), *cert. denied,* 419 U.S. 1027 (1974). The goal of the

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* *See* NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, DIVISION OF STATE AND REGIONAL PLANNING, *LAND USE REGULATION, THE RESIDENTIAL LAND SUPPLY* (April 1972) (a study assembling and examining the nature and extent of municipal zoning practices in 16 New Jersey counties as affecting residential land available for low and moderate income housing).

** PRESIDENT'S COMMITTEE ON URBAN HOUSING, *A DECENT HOME* 47-48 (1968) ("Kaiser Commission Report"); U.S. COMMISSION ON CIVIL RIGHTS, *EQUAL OPPORTUNITY IN SUBURBIA* 6-7 (1974); *see also, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS* 13 (1968) ("Kerner Commission Report").

Fair Housing Act of 1968 (Title VIII of the Civil Rights Act, 82 Stat. 81, 42 U.S.C. §§ 3601 *et seq.*), and of our national housing policy generally is "to replace the ghettos 'by truly integrated and balanced living patterns'" for persons of all races. *Trafficante* v. *Metropolitan Life Insurance Company,* 409 U.S. 205, 211 (1972); *Clark* v. *Universal Builders, Inc., supra,* at 331 n. 4; *Barrick Realty, Incorporated* v. *City of Gary, Indiana,* 491 F.2d 161, 164 (7th Cir. 1974). This legislation reflects our nation's century-long commitment to the elimination of discrimination in housing. (42 U.S.C. § 1982).

This Court has called for an expansive reading of the Civil Rights Acts of 1866 and 1964 and the Fair Housing Act of 1968 in order to assist Congress in its goal of eliminating segregation and discrimination. *Trafficante* v. *Metropolitan Life Insurance Company, supra* at 209; *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 429-30 (1971); *Jones* v. *Mayer Company,* 392 U.S. 409, 437 (1968). Lower courts have followed this principle. *United States* v. *City of Black Jack, Mo., supra,* at 1184.

In shaping these and more recent housing laws, Congress was responding affirmatively to the need to *undo* existing patterns of racial segregation in housing. Federal housing laws were therefore designed to afford disadvantaged minorities equal access to housing opportunities, and these laws have properly been interpreted to prohibit governmental as well as private interference with the housing market's creation and distribution of desegregated housing opportunities to minorities. *United States* v. *City of Black Jack, Mo., supra* at 1183-84; *Kennedy Park Homes Assn.* v. *City of Lackawanna, supra* at 112-14. Indeed, municipalities desiring to receive federal community development funds now have the obligation to plan and provide an opportunity for the private develop-

ment of low- and moderate-income housing within their boundaries for both their own residents and persons who can be expected to reside there. 42 U.S.C. § 5304; 24 C.F.R. 570.303(c); *City of Hartford* v. *Hills,* Civil No. H-75-258 (D. Conn. Jan. 28, 1976).

These remedial laws impose upon governmental bodies whose actions or inactions have contributed to the existence and perpetuation of segregated housing, the obligation not to obstruct efforts to create integrated housing opportunities in metropolitan areas. The Village of Arlington Heights has failed to meet its obligation.

IV.

The Pattern of Segregated Housing in Arlington Heights Warrants the Remedy Sought by Respondents.

Two fundamental conditions have come together in this case: the massive interstate urban area involved (metropolitan Chicago) and the pervasive nature of the housing discrimination existing in metropolitan Chicago, in which the Village of Arlington Heights has participated. As a result, the supremacy of the traditionally local function of zoning, which can be justified when it does not interfere with constitutional rights of citizens, must give way when its exercise does impair constitutional rights. See *Village of Belle Terre* v. *Boraas, supra; So. Burlington Cty. N.A.A.C.P.* v. *Tp. of Mt. Laurel,* 67 N.J. 151, 336 A.2d 713 (1975).

This Court recognized the primacy of constitutionally guaranteed rights over local action which interferes with such rights in *Milliken* v. *Bradley, supra,* the school segregation case involving the City of Detroit. The teaching of *Milliken* is that "no state law is above the Constitution.

School district lines and the present laws with respect to local control, are not sacrosanct and if they conflict with the Fourteenth Amendment federal courts have a duty to prescribe appropriate remedies." 418 U.S. at 744. "The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation." 418 U.S. at 744.

While this Court found no inter-district segregation in *Milliken,* it anticipated one of the significant aspects of the present case: the effect of the present zoning law is unconstitutional not only in its impact in Arlington Heights itself, but also in its impact on the urban area of Chicago of which Arlington Heights is a part. The restrictive practices of Arlington Heights and similar suburbs consign Chicago to becoming progressively a ghetto area for black and minorities. The whites flee to the suburbs and build an effective wall which serves to exclude minorities from their own community and to confine them to the City of Chicago. Government action by Arlington Heights has deprived citizens of their constitutional rights.

In *Milliken* this Court stated:

> "Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district." 418 U.S. at 744-45.

It follows that a remedy must be fashioned to eliminate inter-district wrongs where the district to be affected by the remedy participated in or caused the wrong. In this

case, however, the remedy sought is not an "inter-district" remedy, although such a remedy would be appropriate if required; the remedy sought here is applicable only to one of the participants in the area-wide wrong of segregated housing.

The Court of Appeals was correct in holding that Arlington Heights' rejection of the Lincoln Green proposal had a racially discriminatory effect and, being without compelling justification, violated plaintiffs' right to equal protection of the law guaranteed by the Fourteenth Amendment. To sanction the challenged action would be to provide every suburban municipality an opportunity to escape from its statutory and constitutional obligation to refrain from conduct that interferes with private efforts to construct integrated low- and moderate-income housing and would nullify federal programs designed to implement this national policy.

The effect of such action by suburban municipalities is to perpetuate residential segregation and the continued denial to racial minorities of their right to equal access to housing and employment opportunities guaranteed by the Equal Protection Clause. The sought-for answer to the problem of integrated public schooling which has repeatedly been before this Court, and has been the source of deep national controversy and division, may ultimately be found by attacking its root cause: segregated patterns of residential housing.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the decision of the Court of Appeals be affirmed.

Respectfully submitted,

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